

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
FRANKFORT, KENTUCKY**

RECEIVED

AUG 13 2004

PUBLIC SERVICE
COMMISSION

SIGMA GAS CORPORATION

Complainant

vs.

CASE NO. 04-00018

B.T.U. GAS COMPANY, INC.

Defendants

BRIEF FOR THE DEFENDANT, B.T.U. GAS COMPANY, INC.

Sigma Gas Corporation (hereinafter Sigma) has filed a complaint with the PSC concerning gas customers B.T.U Gas Company, Inc. (hereinafter B.T.U.) is supplying in Salyersville, Magoffin County, Kentucky. B.T.U. became a PSC regulated gas distribution system on September 21, 1994.¹

FACTUAL BACKGROUND

In 1994, B.T.U. had approximately 70 customers in the Dixie area of Salyersville along a line built to originally supply gas to the Salyersville Gas Company, now Sigma. B.T.U. currently has approximately 412 customers in Salyersville and Magoffin County.² After hearing the testimony presented to the Commissioners on June 29, 2004 the customers this controversy concern fall into four categories.

1. The Magoffin County Courthouse gas line,
2. The H.C. Prater gas line,

¹ PSC case #92-220 Order dated September 21, 1994 attached as Exhibit One

² Transcript of hearing on June 29, 2004, p. 62

3. The Dixie area gas line and

4. The Magoffin County Teen Coalition gas line.

It appears from the testimony at the hearing Sigma believes B.T.U. supplying these customers gas is in violation of KRS 278.020(1) and 807 KAR 5:001(9) (3).

1. The Courthouse gas line.

In November of 2003 the Magoffin County Judge-Executive approached B.T.U. Gas about supplying gas to the new Magoffin County Courthouse. In the conversations between Richard Williams, the operations manger for B.T.U., and the county judge executive, Magoffin County expressed two concerns: the cost of the gas supplied to them by Sigma and the county's inability to pay on a regular schedule.³ B.T.U. indicated its ability to assist the county. B.T.U. then laid 1,500 feet of gas line to access the new Magoffin County Courthouse paying \$2,205.00 for the line.⁴

Sigma also complains B.T.U providing gas to the courthouse interferes with Sigma's supplying gas to the new radio station, the Tommy Bailey home and garage. The radio station is not a gas customer and has never been a gas customer, but it does have a tap set by B.T.U if the radio station decides to become a gas customer. This tap was set in consideration of the radio station allowing B.T.U. a right-of-way for the gas line to the courthouse.⁵ Tommy Bailey

³ Transcript, p. 62

⁴ Transcript, p. 63

⁵ Transcript, P. 64-65

is receiving gas supply at no charge in exchange for providing a temporary right-of-way to the new courthouse.⁶

B.T.U. customers the Magoffin County Garage-Recycling Center and Tommy Howard are included in the list of customers Sigma is complaining concerning. At the hearing B.T.U. clarified the Magoffin County Garage-Recycling Center has always been B.T.U. customer. When the location of the customer changed B.T.U. supplied them with gas.⁷ Tommy Howard was in close proximity to the Magoffin County Garage-Recycling Center so, upon his request, Mr. Howard became a B.T.U. customer.

B.T.U. considered the Magoffin County Courthouse gas line to be an extension in the ordinary course of business as contemplated by 807 KAR 5:001(9) (3).

2. The H.C. Prater gas line

The second group of customers is H.C. Prater and Burke Arnett. The Sigma data response dated July 12, 2004 still includes Denise Gambill with this group of customers, but B.T.U. does not provide her gas and never has.⁸ B.T.U. supplies H.C. Prater with gas at his home because Prater has a lease with PJ Resources and under the terms of the lease Mr. Prater is entitled to a gas supply at his home.⁹ Burke Arnett requested gas service because the B.T.U. line supplying H.C. Prater was close to her home and the cost of B.T.U. gas was so

⁶ Transcript, p. 65-66

⁷ Transcript, p. 76

⁸ Transcript, p. 81.

⁹ Transcript, p. 68.

much less than the Sigma service.¹⁰ The gas line to H.C. Prater was established to provide Mr. Prater with gas according to the terms of his lease agreement with PJ Resources. Burke Arnett was accepted as a gas customer because the existence of the line in close proximity to her home made it possible.

B.T.U. considered the Burke Arnett connection to be an extension in the ordinary course of business as contemplated by 807 KAR 5:001(9) (3).

3. The Dixie area gas line.

Richard Williams described the history of Sigma and B.T.U. After Salyersville Gas Company (Sigma's predecessor) emerged from bankruptcy it did not own the gathering line laid by Richard Williams to supply Salyersville Gas. The gathering line had approximately 70 customers in the Dixie area and other areas of Magoffin County. The Dixie customers began as farm tap customers of B.T.U. Sigma filed a complaint concerning these very customers in PSC case 94-059. The complaint was dismissed because the PSC determined the issue of ownership and control of the identified farm tap services was pending in the Magoffin Circuit Court.¹¹

Once B.T.U. had established its ownership of these farm taps, PSC case 92-220 determined B.T.U. was a gas distribution system. The Dixie customers Sigma is again complaining concerning have been recognized B.T.U. customers since 1994. The only customer in the Dixie area that B.T.U. has added is Vint

¹⁰ Transcript, p. 69.

¹¹ PSC case #94-059 Order dated April 7, 1994 attached as Exhibit Two.

Dyer. Mr. Dyer is in the area B.T.U. has served since B.T.U. became a gas distribution company.¹²

Tom Frazier is in the Dixie area and appears on the Sigma data response dated July 12, 2004. Mr. Frazier is supplied gas from his gas well by a lease agreement.¹³

The connection of Vint Dyer as a B.T.U. customer is an extension in the ordinary course of business as contemplated by 807 KAR 5:001(9) (3).

4. The Magoffin County Teen Coalition

The Magoffin County Teen Coalition is supplied gas by Richard Williams and Pam Williams. B.T.U. laid a 500 foot gas line to the Magoffin County Teen Coalition. The line cost \$325.00. The gas bill for the Magoffin County Teen Coalition is paid by Pam and Richard Williams as a donation to the Teen Coalition.¹⁴ The right-of-way to the Teen Coalition is provided by the donation of Moe Arnett who agreed to provide the right-of-way from the gas well to the Teen Coalition free of charge.¹⁵

ARGUMENT

Each of the customers referenced by the Sigma complaint are customers that were added to the B.T.U. system as extensions in the ordinary course of business as contemplated by 807 KAR 5:001(9)(3). The cost to add these customers as B.T.U. customers was nominal. B.T.U. gas lines were in the general area of all the customers and the total construction cost was \$2,905.00.

¹² Transcript, p. 74.

¹³ Transcript p. 59, 82 and 95

¹⁴ Transcript, p. 67

¹⁵ Transcript, p. 97

The City of Salyersville has not given Sigma an exclusive franchise to the City of Salyersville. This lack of an exclusive franchise is notice of the legislative intent of the elected officials of Salyersville. Salyersville has noted that competition is advantageous to the gas consumers of Salyersville. Sigma has no right to a competition free service area.¹⁶

Nor is this a wasteful duplication of services. The consumers in the Salyersville area have a choice of which gas company they purchase from and they naturally will use the supply of a company with significantly lower tariffs. The establishment of these lines has not caused B.T.U. to incur any debt and will not cause the rates of B.T.U. customers to rise.

It appears this matter may be purely motivated by Mr. Branham's management contract with Sigma. Mr. Branham's compensation is based upon a guaranteed fee of ten dollars per billing month for each customer of Sigma.¹⁷ Therefore, any action taken to increase the Sigma customer base necessarily increases Mr. Branham's personal compensation package.

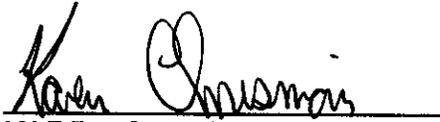
The gas consumers of Magoffin County are reaping the benefits of competition in the gas market in Magoffin County. Any interference with this market will merely result in higher gas rates for the consumer and personal advantage for Mr. Branham. Sigma has not met its burden of proof. There was no evidence these additions to the customers of B.T.U. were a wasteful

¹⁶ Public Service Commission of Kentucky v. The City of Paris, 299 S.W.2d 811, 815 citing Tennessee Electric Power Company v. Tennessee Valley Authority, 306 U.S. 118, 59 S.Ct. 366, 370, 83 L.Ed. 543 and Public Service Commission v. Cities of Southgate, KY., 268 S.W.2d 19, 21.

¹⁷ PSC case #93-349, Order dated December 15, 1993
Pages 3-5 attached as Exhibit three.

duplication or conflicted with the existing service of other utilities. The compliant of Sigma against B.T.U. should be dismissed.

Respectfully submitted,



KAREN CHRISMAN

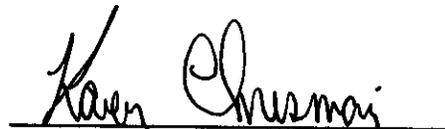
McBrayer, McGinnis, Leslie & Kirkland
State National Bank Building, Suite 300
P.O. Box 1100
Frankfort, Kentucky 40602-1100
(502) 223-1200
Counsel for B.T.U. Gas Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing Brief has been served by U.S. Mail, postage prepaid, this the 16th day of August, 2004 upon the following:

Hon. John N. Hughes
124 W. Todd St.
Frankfort, KY 40601

and hand delivered to the filing office of the PSC.


KAREN CHRISMAN

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF RICHARD)
WILLIAMS, D/B/A B.T.U. PIPELINE,) CASE NO. 92-220
INC. AND M5-A1, INC.)

O R D E R

On May 29, 1992, the Commission established this proceeding to determine the jurisdictional status of the R. C. Energy pipeline; to investigate certain rate and other issues related to a proposed tariff filed by B.T.U. Pipeline, Inc. ("B.T.U."); and to determine the impact on Sigma Gas Corporation ("Sigma") and certain customers of severing the R. C. Energy pipeline from Sigma's distribution system (as proposed by M5-A1, Inc. ("M5-A1")).¹ The investigation began after the Commission received information from Richard Williams, representing B.T.U. and M5-A1, indicating that M5-A1 had purchased a natural gas pipeline in Magoffin County, Kentucky called the R. C. Energy pipeline. The R. C. Energy pipeline had been operated for a number of years as part of the Salyersville Natural Gas Company, Inc.'s ("Salyersville Gas") distribution system. Salyersville Gas, (now operating as Sigma),² moved that this proceeding be held in abeyance until the conclusion of proceedings in the United States Bankruptcy Court for the Eastern

¹ Approximately 27 customers are served from this pipeline, including most of Sigma's commercial sales, and represent about 25 percent of Sigma's annual revenues.

² Case No. 93-349, The Joint Application of Sigma Gas Corporation and Salyersville Gas Company, Inc. for Approval of the Acquisition of Assets of Salyersville Gas Company, Inc.

District of Kentucky ("Bankruptcy Court").³ By Order entered July 20, 1992, the Commission granted the motion and held in abeyance a determination on the jurisdictional status of the R. C. Energy segment only.

Other issues remain. B.T.U. has pipeline facilities in Magoffin County, other than the R. C. Energy pipeline, which provide gas service to more than 140 customers. It is the jurisdictional status of these other pipeline facilities which are addressed in this Order.

On March 21 and 22, 1994, Commission Staff inspected B.T.U.'s facilities. A copy of the April 8, 1994 inspection report is attached as an Appendix to the Commission's April 27, 1994 Order in this proceeding. The inspection report includes a recommendation that B.T.U. should be declared a gas distribution utility pursuant to KRS 278.010(3)(b). B.T.U. responded to the report and a hearing was held.

JURISDICTIONAL STATUS

On June 11, 1992, B.T.U. filed a tariff, with no effective date, in which it proposed to provide service pursuant to KRS 278.485 and requested Commission approval for rates to sell gas to customers connected to its pipelines. B.T.U. represented that it was operating pipelines to gather gas from various producers for resale to markets available through pipeline facilities operated by Columbia Gas Transmission Corporation, Kentucky West Virginia Gas Company, and Ashland Oil, Inc.

³ Salyersville Gas, after seeking Chapter 11 Bankruptcy protection, instituted an adversary action to quiet title to the R. C. Energy pipeline.

In its inspection report, Staff concluded that all of B.T.U.'s pipelines are being operated as a self-contained system; that is, none of B.T.U.'s gas leaves its system. These pipelines, including various dead-end lateral lines, were either installed by B.T.U. or acquired through purchase. From these pipelines and lateral lines, B.T.U. provides gas service to residential and small commercial end-users. According to B.T.U., the principal sources of gas for its customers are local wells.

During the June 3, 1994 hearing, B.T.U. accepted Staff's report as factually accurate⁴ and its conclusion that B.T.U. is operating as a gas distribution utility.⁵ B.T.U. testified that all gas which enters its system is used by its customers,⁶ and that it makes no wholesale sales, i.e., no sales for resale.⁷

SERVICE AND RATE ISSUES

In its April 27, 1994 Order, the Commission required B.T.U. to respond to Staff's inspection report and, specifically, to address certain dangerous conditions and violations of 807 KAR 5:022 (Gas Safety) which the report alleged to exist. In its May 25, 1994 response, B.T.U. stated that the conditions had either been corrected or that the customers had been disconnected for failure to comply. B.T.U. affirmed these facts in subsequent testimony.⁸

⁴ Transcript of Evidence ("T.E."), page 13.

⁵ T.E., page 15.

⁶ Id. at 30.

⁷ Id. at 30-31.

⁸ Id. at 33-35.

As a gas distribution utility, B.T.U. would be required to develop and file with the Commission certain safety-related plans in compliance with 807 KAR 5:022 and 807 KAR 5:023. B.T.U. responded that it would comply with these requirements.⁹

Staff's inspection report recommended that B.T.U.'s previously submitted tariff be rejected because it proposed service pursuant to 807 KAR 5:026 (Gas Service; Gathering Systems). Staff recommended that B.T.U. resubmit its tariff with rates and conditions for the service it intends to provide as a gas distribution utility.

B.T.U. acknowledged that it would have to revise the proposed tariff to operate as a utility and related that it would submit a two-tiered rate structure.¹⁰ B.T.U. is currently charging two rates: \$7 per Mcf to customers in Elk Creek, May Branch, Lick Creek, Dixie, and Lakeville; and \$4.50 per Mcf to customers in Oakley Creek, Royalton, Puncheon, Salt Lick, and Bee Tree Branch.¹¹ According to B.T.U., the distinction is based upon whether B.T.U. or the customer has paid for the service line and regulator.¹²

In resubmitting its tariff to operate as a distribution utility, B.T.U. should note that 807 KAR 5:022, Section 8(2)(c), requires the utility to provide the meter and any appurtenance necessary to measure gas. The Commission interprets "appurtenance" to include a service regulator. 807 KAR 5:022, Section

⁹ Id. at 15.

¹⁰ Id. at 52-55.

¹¹ Id. at 50.

¹² Id. at 53.

9(17)(a)(2), requires the customer to furnish and lay the service line. B.T.U.'s tariff should comply with these requirements. B.T.U.'s tariff should also address the flat rates and free gas which it currently provides to some customers, as well as its existing two-tier rate structure. B.T.U.'s proposed rates and service as a gas distribution utility must comply with KRS 278.030, KRS 278.170 and all other relevant provisions of Chapter 278.

GAS SUPPLY

Prior to issuance of Staff's April 8, 1994 inspection report, B.T.U.'s operations had been considered production and gathering with service provided to end-users pursuant to KRS 278.485. A gas company which provides such service is not required to maintain a fixed or specified gas pressure, and the quality of gas is not regulated. However, B.T.U. would be required as a gas distribution utility to adopt and maintain a standard pressure [807 KAR 5:022, Section 13(14)]; establish and maintain a standard heating value for its gas [807 KAR 5:022, Section 16(2)]; and maintain purity of its gas within the requirements of 807 KAR 5:022, Section 15.

As a distribution utility, B.T.U. would also be required to provide adequate service [KRS 278.010(12) and KRS 278.030(2)]. B.T.U. claims that it has 30 gas wells currently connected to its system which are ready for production, and has production information on each well.¹³ However, only 10 wells are active at present.¹⁴ Nevertheless, it is unclear to the Commission whether the total production of gas available to B.T.U. is sufficient and

¹³ Id. at 40.

¹⁴ Id. at 42-43.

of adequate quality to meet the normal and peak day needs of its customers plus any contract requirements it may have with wholesale purchasers.

B.T.U. should develop and provide to the Commission an estimate of its normal and peak day requirements for the 1994-95 heating season, and determine the heating value and purity of gas from each well it intends to use as a source to supply its distribution customers. B.T.U. should also provide to the Commission the production history for each well B.T.U. claims is presently active or connected to its system and for the wells which are referenced in Staff's inspection report. B.T.U. should also provide a list of the 30 wells it claims are currently connected to its system.

IT IS THEREFORE ORDERED that:

1. The findings contained in the Staff Report, including specifically the finding that B.T.U. is a gas distribution utility pursuant to KRS 278.010(3)(b), are accepted as the findings of the Commission.

2. Within 20 days of the date of this Order, B.T.U. shall notify the Commission of the status of the adversary proceeding in U. S. Bankruptcy Court.

3. Within 30 days of the date of this Order, B.T.U. shall file with the Commission a tariff which includes but is not necessarily limited to:

a. Rates, including volumetric changes for gas consumed, and any other fees it proposes to charge, as a distribution utility, to its customers for gas service.

b. Conditions for service and other applicable sections of 807 KAR 5:006.

c. The standard service pressure and standard heating value which it proposes to maintain and adopt for its gas.

4. Within 30 days of the date of this Order, B.T.U. shall file with the Commission the following information:

a. A list of its customers based upon its most recent billing. Customers shall be separated according to the service areas identified in Staff's inspection report.

b. Estimates of its normal and peak day requirements for the 1994-95 heating season and how these estimates were derived.

c. A list of the 30 wells currently connected to its system; the pipeline(s) within its system to which each well is connected; and the production history (Mcf/s/month) of each well for calendar years 1992 and 1993. B.T.U. shall identify which of the 30 wells are included in Staff's inspection report and, for each well not included in the inspection report or for which no production history is available, B.T.U. shall propose a means by which its production capability (Mcf/s/day) will be determined and when such determination will be made.

d. A list of any additional wells and their locations (service area) and the identity of any other source of gas supply which it considers available for distribution to customers during the 1994-95 heating season, and the amount of gas available (Mcf/s/day) from each well and other source.

e. A summary of each contract B.T.U. has with a wholesale purchaser which includes the term of the contract and the amount (Mcf/s) of gas committed. This summary shall be limited to

those contracts which commit gas production from wells previously identified in responses to this Order.

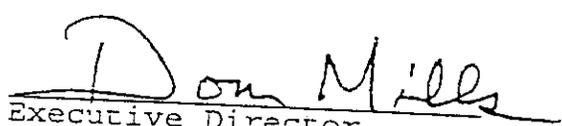
5. Within 30 days of the date of this Order, B.T.U. shall file with the Commission a copy of its standard method of meter and service line installation which has been adopted.

6. Within 90 days of the date of this Order, B.T.U. shall file with the Commission copies of its Operating and Maintenance Plan, Emergency Plan, Damage Prevention Plan, and Drug Testing Plan.

Done at Frankfort, Kentucky, this 21st day of September, 1994.

By the Commission

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 92-220 DATED 4/27/94

INSPECTION REPORT

B.T.U. Pipeline, Inc.
Magoffin County, Kentucky.

April 8, 1994

BRIEF

On March 21-22, 1994, Commission Staff visited B.T.U. Pipeline, Inc. (B.T.U.) to inspect all of B.T.U.'s pipelines and customer services and to determine the jurisdictional status of B.T.U.'s operations. Present for Staff were: David Kinman, a gas safety investigator with the Commission's Gas Pipeline Safety Branch; and Mark Hostetter and Ralph Dennis with the Commission's Gas Branch. Representing B.T.U. was Richard Williams.

The pipeline facilities and service areas inspected fall into two categories: pipelines installed or owned by B.T.U. (Rockhouse Fork Area, Elk Creek/Lick Creek, Dixie Avenue/Auxier Branch, Lakeville Road/Petro); and pipelines originally owned by Inland Gas Company (Inland). The service areas in this latter category and the designated ex-Inland pipeline are: Oakley (FG-51), Royalton (FG-47/G-39), Puncheon Camp Creek, Salt Lick, and Long Branch (G-39), and Beetree Branch (FG-40/41). Also inspected in some of these service areas were lateral lines which B.T.U. has installed.

All of these pipelines have customer services; however, responsibility for those customers connected to or in the general area of pipelines previously owned by Inland is claimed by both B.T.U. and Sigma Gas Corporation (Sigma), a local gas distribution

Report - B.T.U. Pipeline
Page 2
April 11, 1994

utility providing service in Salyersville and jurisdictional to the Commission. This dispute, concerning customers most of whom have been considered in the past to be subject to 807 KAR 5:026 (farm tap service), is the subject of Civil Action No. 93-CI-00185 in Magoffin Circuit Court.

Included in this report are: Exhibit A, a county map which depicts the geographical location of each pipeline/service area and the extent to which the pipelines are interconnected; and Exhibit B, a series of descriptive summaries with details on each pipeline/service area.

INVESTIGATION

B.T.U. has installed a series of interconnected pipelines which stretch from north of Salyersville, southward through and around Salyersville, to the Bull Branch area south of Salyersville. This interconnected pipeline system includes several dead-end lateral lines from which additional service is provided. In the southern area of this system (Lakeville Road area), B.T.U. has connected its pipeline to the Petro pipeline (to which B.T.U. claims ownership) which had been but is not presently connected to an ex-Inland pipeline (FG-47).

B.T.U. also operates a pipeline in the vicinity of Highway 114 east of Salyersville designated Rockhouse Fork. It is a dead-end lateral line which has been disconnected from a pipeline which generally parallels Highway 114 (the R.C. Energy pipeline),

operated by Sigma and which Sigma considers to be part of its distribution system.

From these pipelines and lateral lines, B.T.U. provides gas service to residential and small commercial end-users. According to B.T.U., the sources of gas for this portion of its operations are local wells; none of this gas leaves the pipeline system.

B.T.U. has also provided service to many end-use customers from various pipelines previously owned by Inland (and were operated by Inland as gathering pipelines): FG-47, FG-51, G-39, and FG-40/41. From some of these pipelines, B.T.U. has since installed lateral lines to provide service. Some of the customers served from some of these lateral lines were previously directly connected to ex-Inland pipelines, FG-47 or G-39. Pursuant to the Court's Order in CI-93-00185, B.T.U. has been ordered to maintain service to these customers, both those customers served directly from ex-Inland pipelines and those now served from more recently installed lateral lines, until the Court issues a final ruling.

According to B.T.U., the source of gas for these customers is principally gas flowing through the G-39 pipeline for ultimate delivery to Sigma. Gas delivered into G-39 is from either Equitable Resources Exploration or Devco/Global Environmental Industries, Inc. However, B.T.U. stated that gas from local wells which belong to B.T.U. is used to provide service to customers now connected to two of B.T.U.'s lateral lines (which are actually well

Report - B.T.U. Pipeline
Page 4
April 11, 1994

lines from the J. W. Howard and C. K. Stevens wells and have been disconnected from ex-Inland pipelines).

During the course of this inspection, Mr. Williams stated that all of his customers' taps and meter sets had been inspected by Commission Staff prior to the initiation of any service, except for the most recent group of customers who are provided service in the Puncheon Camp Creek area. However, after a search of Commission records, Staff has been unable to locate any documents which indicate that any of B.T.U.'s customers' services have been inspected, except for the farm tap customers who are presently connected to the G-39 pipeline. Since B.T.U. has considered itself a farm tap system providing gas service to customers pursuant to KRS 278.485, Commission Staff's inspection of a customer's tap and meter set is required prior to initiation of service [807 KAR 5:026, Section 3(4)].

FINDINGS

1. The pipelines which B.T.U. has installed (Elk Creek/Lick Creek, Buffalo Creek, and Dixie Avenue/Auxier Branch) and acquired through purchase (Petro), along with the various lateral lines, are operated as a self-contained gas system, the only purpose of which at present is to provide service to end-users. The Rockhouse Fork pipeline, while not interconnected with these other pipelines, is operating in the same manner. Gas service in all of these areas represents a distribution utility function as defined in KRS 278.010(3)(b).

Report - B.T.U. Pipeline
Page 5
April 11, 1994

2. Meter sets for customers served from the Elk Creek/Lick Creek, Dixie Avenue/Auxier Branch and Petro pipelines generally comply with Commission regulations for distribution service. However, some meter sets had atmospheric corrosion; a limited number had copper tubing on the customer side of the meter; and some had hose clamps and aboveground plastic pipe connecting the customer's service line to the meter.

3. While inspecting the B.T.U.-installed pipelines, some areas were observed where the soil had eroded and exposed portions of plastic pipe. At each of these points, the depth of the pipeline did not appear to be adequate and in compliance with 807 KAR 5:022, Section 7(12)(a); and there was no evidence of the installation of tracer wire, a violation of 807 KAR 5:022, Section 7(12)(e). Inadequate depth and lack of tracer wire is also evident on the Lick Creek pipeline where it ends on Highway 3334, and the end of the pipe is exposed above ground.

4. B.T.U. has installed pipeline markers along the routes of the pipelines it has installed. However, none appeared to include the owner's name, address, or telephone number, a violation of 807 KAR 5:022, Section 14(5)(d)(1) and (2).

5. The only current source of gas for customers connected to the FG-51 pipeline (Oakley service area) is gas being backfed into the pipeline from the G-39 pipeline. While local wells are connected to the FG-40/41 pipelines and are being used to provide service to customers connected to these pipelines, no local gas

enters the G-39 pipeline since the valve at the interconnection point of FG-40/41 and G-39 is closed. Gas service in each of these instances represents a distribution function as defined in KRS 278.010(3)(b).

6. B.T.U. is also providing service to customers connected to three lateral lines: the J. W. Howard well line, the C. K. Stevens well line; and the Puncheon Camp Creek line. Both the Howard and Stevens well lines used to be but are not presently connected to ex-Inland pipelines, FG-47 and G-39 respectively. The Puncheon Camp Creek lateral, which is directly connected to the G-39 pipeline, has no wells connected to it. Gas service in all three of these instances represents a distribution function as defined in KRS 278.010(3)(b).

RECOMMENDATIONS

1. B.T.U. should be declared a gas distribution utility and be required to develop and file with the Commission an Operating and Maintenance Plan [807 KAR 5:022, Section 13(2)(b)], an Emergency Plan [807 KAR 5:022, Section 13(9)], a Damage Prevention Program [807 KAR 5:022, Section 13(8)], and a Drug Testing Plan (807 KAR 5:023).

2. B.T.U. should adopt a standard method of meter and service line installation in compliance with 807 KAR 5:022, Section 8(2)(d), and provide a copy to the Commission and prospective customers. Any rebuilding of existing meter sets or service lines should comply with the standard method adopted.

3. B.T.U.'s meters and regulators at all customer services should comply with 807 KAR 5:022, Section 9(2)(a), (b), (c), and (f).

4. Test requirements for service lines and plastic pipelines before being placed in service should comply with 807 KAR 5:022, Section 11(6)(a), (b), and (c); and Section 11(7)(a), (b), (c), and (d).

5. B.T.U. should operate its system at pressures in compliance with 807 KAR 5:022, Section 13(12)(a) and (b) and Section 13(13)(a) and (b).

6. Any service lines reinstated for service by B.T.U., or any facilities which B.T.U. abandons or inactivates, should comply with 807 KAR 5:022, Section 14(14) and (15).

7. Each B.T.U. customer should be separately metered to comply with 807 KAR 5:022, Section 8(2)(e), including customers who receive gas as compensation for leases and rights-of-way [807 KAR 5:022, Section 8(2)(b)]. B.T.U. should correct any existing service where a customer is not separately metered, including three services in the Dixie Avenue/Auxier Branch service area (Will Conley, Jimmy Hoskins, and Orvel Howard) and services in the Oakley area where three customers are served from one meter (Ronald Minix, Sr., Jasper Minix, and Ronald Minix, Jr.).

B.T.U. should also replace any inoperable meters at existing services, including the meters for Janet Smith (Dixie Avenue/Auxier Branch); Dave Montgomery (Oakley); and Randolph Jackson (Royalton).

8. B.T.U.'s installation of plastic pipe should comply with 807 KAR 5:022, Section 7(12)(a), (c), (d), (f), and (e). The depth of B.T.U.'s plastic pipelines and whether tracer wire (or other means of location) has been used should be the focus of a follow-up inspection.

9. B.T.U. should immediately address the dangerous conditions in the following service areas viewed during the inspection to comply with 807 KAR 5:006, Section 14(1)(b), and notify the Commission that the corrections have been made: copper tubing at three meter sets in Elk Creek (Norma Howard, Virgil Plummer and Todd Plummer); aboveground plastic at one service (Molly Montgomery), and a pair of vise grips holding the regulator pin in the out position at another service (Troy Minix), both in Oakley; black plastic pipe at two meter sets in Puncheon Camp Creek (Adam Risner and Mary Risner); and the use of hose clamps at one meter set in Lakeville (Viola Minix).

10. B.T.U. should immediately replace the inoperable regulator at the Phillip Conley meter set in Puncheon Camp Creek to comply with 807 KAR 5:022, Section 4(30)(b)1, and notify the Commission that the replacement has been made.

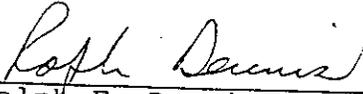
11. The tariff which B.T.U. has submitted in Case No. 92-220 should be rejected since it relates to gas service provided pursuant to 807 KAR 5:026. B.T.U. should resubmit its tariff as a gas distribution utility with all rates, services, and rules it intends to provide. B.T.U.'s tariff should address in some manner

Report - B.T.U. Pipeline
Page 9
April 11, 1994

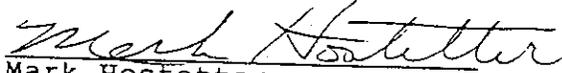
the flat rates and free gas which B.T.U. currently provides to some customers, and such rates and service should be in compliance with KRS 278.030 and KRS 278.170.

12. Pipeline markers installed by B.T.U. should comply with 807 KAR 5:022, Section 14(5)(a), (c), and (d) 1 and 2.

Respectfully submitted,



Ralph E. Dennis, Manager
Gas Branch



Mark Hostetter
Geologist



David B. Kinman
Utility Investigator

DESCRIPTIVE SUMMARIES OF
B.T.U. PIPELINE, INC. SERVICE AREAS AND PIPELINESA. SERVICE AREA: Rockhouse Fork

LOCATION: Hwy. 114 east, left onto Hwy. 1415; also includes a lateral which crosses Highway 114 to Hwy. 1888.

NO. OF CUSTOMERS: 5 (includes 1 customer on Hwy. 1888 lateral)

CONSTRUCTION: Approximately 7,000 feet of 2-inch plastic pipe (with tracer wire according to B.T.U.).

SOURCE OF GAS: Local wells - Cain (2), Collinsworth (5), and Lemaster (1).

PIPELINE(S)/INTERCONNECTIONS: The Rockhouse Fork pipeline is currently connected to a series of active local wells. In the past, this line was connected to Salyersville's local distribution utility when operated as Salyersville Gas Company, Inc. The pipeline is presently disconnected from the distribution utility, now operating as Sigma Gas Corporation.

As currently configured, this system consists of a series of well lines connected to a pipeline, through which gas is moved to provide service to four end-users. B.T.U. has also laid a lateral pipeline from the Rockhouse Fork line, across Hwy. 114 to Hwy. 1888, to provide free gas to a well owner (Calvin Cain).

B. SERVICE AREA: Elk Creek (including May Branch) and Lick Creek

LOCATION: Elk Creek - Along Hwy. 460 west, right onto Hwy. 2019 and ending at the Hwy. 2019/Hwy. 3334 intersection;

includes two lateral pipelines--at May Branch (in the vicinity of Hwy. 460) and a gravel road off Hwy. 2019. Lick Creek - Begins at the Hwy. 2019/Hwy. 3334 intersection, follows Hwy. 3334 east until pipeline ends, and includes one lateral on a gravel road; and a second leg of Lick Creek follows Hwy. 2019 north beyond the intersection with Hwy. 3334 until the pipeline ends.

NO. OF CUSTOMERS: Elk Creek - 41

Lick Creek - 10

CONSTRUCTION: Elk Creek - Approximately 20,000 feet of three-inch plastic with tracer wire (according to B.T.U.) along Hwy. 460 and Hwy. 2019, plus approximately 4,000 feet of two-inch plastic with tracer wire (according to B.T.U.) for the May Branch and gravel road laterals. Lick Creek - Approximately 7,000 feet of three-inch plastic on Hwy. 3334, including the gravel road lateral; and approximately 11,000 feet of three-inch plastic for Hwy. 2019 (beyond the intersection).

SOURCE OF GAS: Local wells - Fred Howard (1), Tackett (2), Vanderpool (2), and Conley (1), Martin (1), G. V. Joseph (1), and R. C. May (2).

PIPELINE(S)/INTERCONNECTIONS: The Lick Creek pipeline interconnects with the Elk Creek pipeline, which in turn is interconnected with B.T.U.'s Dixie Avenue pipeline. The Howard well, which is directly connected to the Lick Creek pipeline on Hwy. 3334, is the principal source of gas for customers connected to these pipelines.

One end of each leg of the Lick Creek pipeline ends without connection to anything. The other ends of each leg interconnect to the Elk Creek pipeline which eventually interconnects with another portion of the B.T.U. system (the Dixie Avenue pipeline). At present all gas which enters these pipelines is used to provide service to end-users connected to these pipelines (as well as customers connected to other pipelines owned or claimed by B.T.U.).

C. SERVICE AREA: Dixie Avenue/Auxier Branch

LOCATION: Begins on Dixie Avenue (off Hwy. 460 west) and ends at its interconnection with the Petro pipeline owned by B.T.U. This pipeline includes a section along Auxier Branch which had been installed a few years ago.

NO. OF CUSTOMERS: 7

CONSTRUCTION: Approximately 7,000 feet of three-inch plastic pipe with tracer wire (according to B.T.U.), including one lateral on a gravel road (off the newer section of pipeline).

SOURCE OF GAS: Local wells - Fred Howard (1) and Tackett (2), Martin (1), G. V. Joseph (1), and R. C. May (2).

PIPELINE(S)/INTERCONNECTIONS: The Dixie Avenue pipeline, including the Auxier Branch section, is interconnected at one end with the Elk Creek pipeline and at the other end with the Petro pipeline. This pipeline system was interconnected with Salyersville's local distribution utility in the area of the Auxier Branch section. At present, this connection has been severed by Sigma Gas.

Dixie Avenue/Auxier Branch delivers gas to end-users directly connected to the pipeline. Some of the customers served have no meters since they are either free customers or billed a flat rate. One meter has been burned and needs to be replaced.

The source of the gas for these customers is identical to the source used for the Elk Creek/Lick Creek customers. The Dixie Avenue pipeline should be considered an interrelated part of the Elk Creek/Lick Creek and Petro pipeline systems which are operated by B.T.U. (the Petro pipeline is part of the Lakeville Road system described herein).

D. SERVICE AREA: Lakeville Road

LOCATION: Hwy. 7 south, right onto Hwy. 1090.

NUMBER OF CUSTOMERS: 11

CONSTRUCTION: Approximately 26,000 feet of four-inch plastic pipeline called the Petro pipeline (installed several years ago by another party); approximately 7,000 feet of two-inch plastic pipeline which connects a local well (R. C. May) to the Petro pipeline; and approximately 7,000 feet of a two-inch plastic lateral line. The two-inch lateral also has a short lateral paralleling a gravel road off Hwy. 1090.

SOURCE OF GAS: Local wells - Tackett (2), G. V. Joseph (1), Vanderpool (2), R. C. May (2), Conley and Martin, and Fred Howard (1).

PIPELINE(S)/INTERCONNECTIONS: The Lakeville Road pipeline system consists of the Petro pipeline with two major laterals.

The northern end of the Petro pipeline interconnects with the Dixie Avenue/Auxier Branch pipeline, while the southern end currently interconnects with a well line to B.T.U.'s G. V. Joseph well. The Petro pipeline has been disconnected from its connection to the FG-47 pipeline (previously owned by Inland).

At present, none of B.T.U.'s gas which enters the Lakeville Road pipeline system flows into the FG-47 pipeline. In fact, the flow of gas in FG-47 is to the north towards Salyersville (through the Cobra pipeline) for delivery to Sigma Gas. All of B.T.U.'s gas is used to provide service to the end-users directly connected to the Petro pipeline or lateral lines. Like the Dixie Avenue/Auxier Branch service area, there is a mixture of paying, free, and flat rate customers served from the Lakeville Road pipeline system.

E. SERVICE AREA: Oakley Creek Area

LOCATION: Hwy. 7 south, right onto Hwy. 867 and then left onto Hwy. 1635; also some service on right turn off Hwy. 1635 (Right Branch of Oakley Creek).

NO. OF CUSTOMERS: 13

CONSTRUCTION: The principal part of the Oakley system is the FG-51 pipeline, a six-inch steel pipeline installed 40-50 years ago. The portion of the pipeline with customers is approximately 13,000 feet. Some of the customers considered part of the Oakley system are connected to and served from a

section of the G-39 pipeline in this area, approximately 2,500 feet of six-inch steel.

SOURCE OF GAS: Unclear. Two wells, Carty and Rowe, are near the end of the FG-51 pipeline. In the past, B.T.U. has claimed the right to these wells, but more recently Devco/Global Environmental has claimed ownership. According to B.T.U., both of these wells are currently shut in, and the well lines from each well have been disconnected from the FG-51 pipeline.

In addition, it is unclear whether gas which is moving through the G-39 pipeline to the FG-47 pipeline for ultimate delivery to Sigma Gas in Salyersville is also being backfed into the FG-51 pipeline at the FG-51/G-39 interconnection point. Given the absence of any other sources of gas, it is likely that gas for B.T.U.'s customers served from the FG-51 pipeline is coming from one or both of these sources; that is, the Carty and Rowe wells or gas backfed from the G-39 pipeline.

PIPELINE(S)/INTERCONNECTIONS: The FG-51 pipeline's only interconnection is with the G-39 pipeline. Aboveground plastic was seen at one service on the customer side of the meter; and at another service, three customers were being served from one meter (at this site, it could not be observed whether each customer had adequate pressure regulation). Just past the three customers/one meter site, there was also a pair of vise grips holding the regulator pin in the out position.

Several of the customers on this system are also free or flat rate customers.

F. SERVICE AREA: Royalton Area

LOCATION: Hwy. 7 south past the turn for Hwy. 867, in the general vicinity of the communities of Royalton and Sublett, and the Sandbottom and Meadows Branch areas.

NO. OF CUSTOMERS: 31

CONSTRUCTION: Some service is directly from the FG-47 and G-39 pipelines, both of which are six-inch steel in this service area. The remaining service is from two local wells, each of which has a three-inch steel well line (although the J. W. Howard well line has a small section of two-inch plastic).

SOURCE OF GAS: Local wells - J. W. Howard (1) and Stevens (1); and the G-39 pipeline (probably from gas delivered into the pipeline by Devco or Equitable Resources Exploration for ultimate delivery to Sigma).

PIPELINE(S)/INTERCONNECTIONS: FG-47 connects to the Cobra pipeline (ownership claimed by Devco/Global Environmental), which is three-inch plastic, and with the G-39 pipeline, which connects with the Columbia Natural Resources system (approximately 15-20 miles east of this area). According to B.T.U., neither of the well lines from the J. W. Howard or Stevens wells is connected to the G-39 pipeline.

None of the gas currently produced from the J. W. Howard and Stevens wells enters the G-39 pipeline and is used solely

to provide service to customers connected to the well lines. Gas which enters the G-39 pipeline from other sources is used to provide service to B.T.U.'s customers directly connected to the G-39 pipeline.

G. SERVICE AREA: Puncheon Camp Creek

LOCATION: Hwy. 7 south; also, from Hwy. 7 left onto Hwy. 1766.

NO. OF CUSTOMERS: 19

CONSTRUCTION: Most of the service in this area is from one of two lateral pipelines connected to the G-39 pipeline. According to B.T.U., the first two-inch plastic lateral (which serves four customers) is in the vicinity where the G-39 pipeline crosses Hwy. 1766, and was installed by another party sometime in 1991. A second two-inch plastic lateral with tracer wire (according to B.T.U.) has been installed by B.T.U. to provide service to 11 customers who were previously directly connected to the G-39 pipeline.

SOURCE OF GAS: Gas which has been delivered into the G-39 pipeline from sources other than B.T.U.

PIPELINE(S)/INTERCONNECTIONS: Each of the lateral pipelines is connected to the G-39 pipeline, which is interconnected at one end (east) to the Columbia Natural Resources gathering system and at the other end with the FG-47 pipeline.

At least in one instance a customer's regulator needs to be replaced; and at two other services, black plastic pipe on the customer side of the meter needs to be replaced. None of

J. ADDITIONAL PIPELINE(S): Buffalo Creek and Long Branch

During the March 21-22, 1994, inspection Staff also discussed two other pipelines: Buffalo Creek and Long Branch. The Buffalo Creek pipeline parallels a road off Hwy. 2019, past the turnoff for Hwy. 3334 (Lick Creek area). It is a three-inch plastic pipeline of approximately 12,000 feet connected to the Lick Creek pipeline. According to B.T.U., there is no gas service from this pipeline at present; B.T.U.'s intentions are to extend the pipeline northeast to interconnect with an Ashland Oil pipeline.

Long Branch is located off Hwy. 7 south between Salt Lick and Beetree Branch. Six customers (all free and metered) are served from this six-inch and eight-inch steel pipeline which is the G-39 pipeline. B.T.U. stated Sigma now services these customers, and B.T.U. does not claim any right to this service.

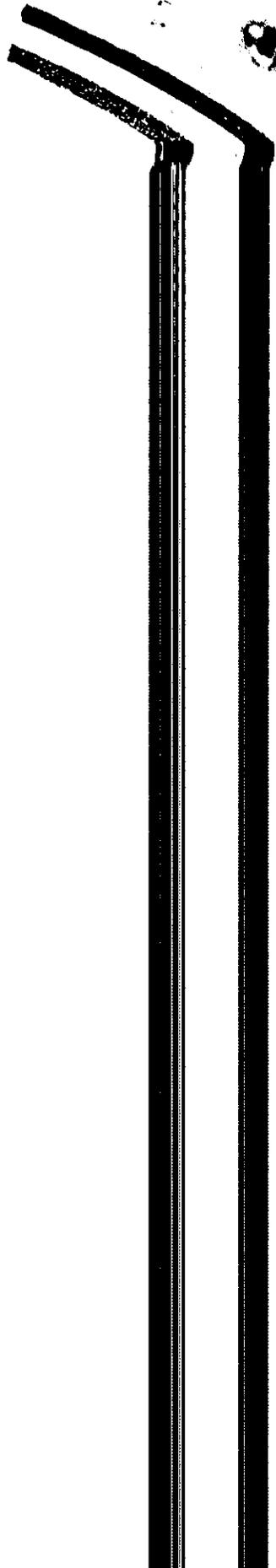


EXHIBIT "A"

B.T.U. PIPELINE, INC. PIPELINES

OLD INLAND GAS CO. PIPELINES
G-39, FG-47, FG-51, FG-40,41

ROCKHOUSE FORK AREA

ELK CREEK, LICK CREEK, MAY BRANCH,
BUFFALO CREEK AREA

DIXIE AVENUE, AUXIER BRANCH AREA

LAKEVILLE AREA

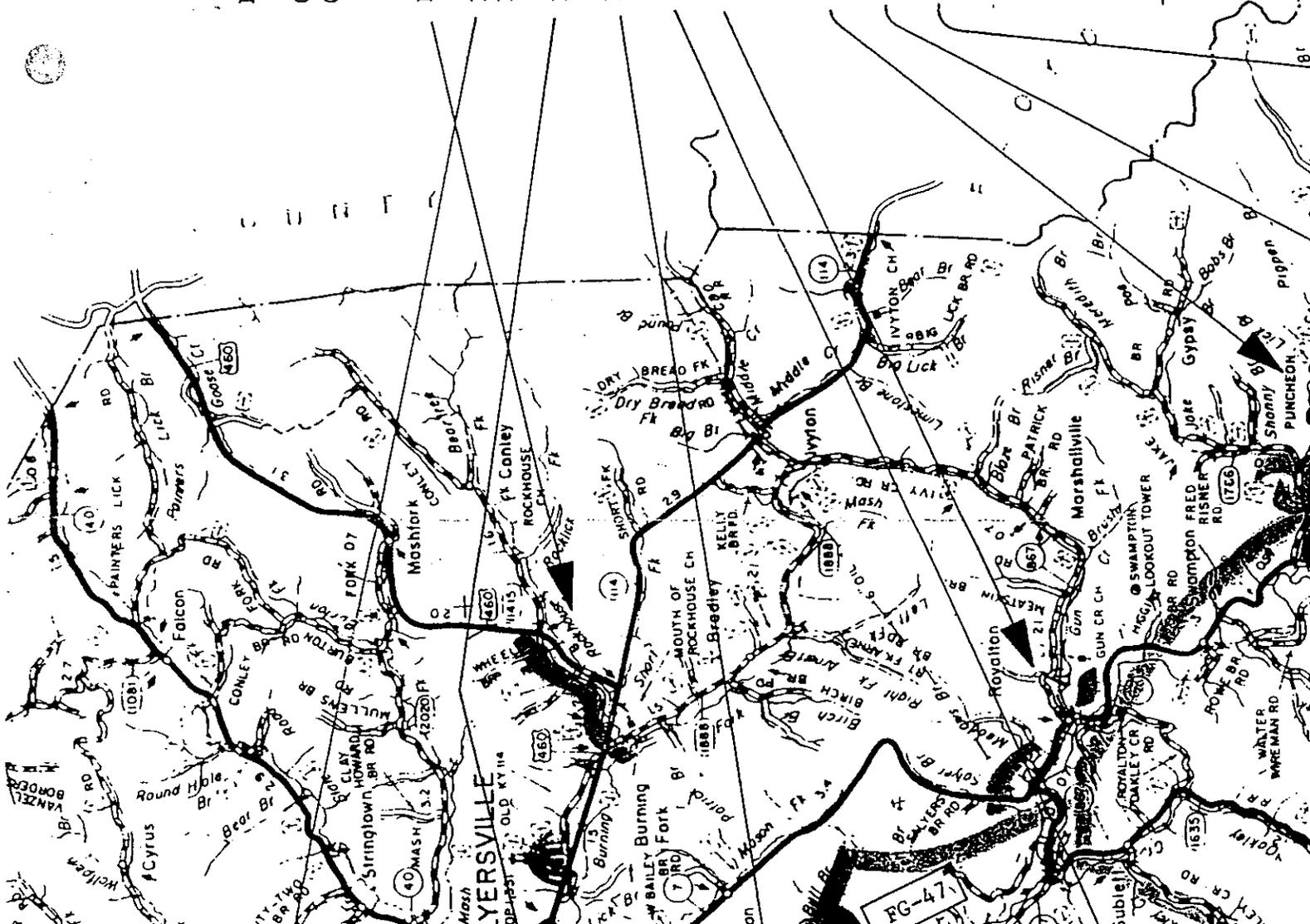
OAKLEY CREEK AREA

ROYALTON AREA WHICH INCLUDES:
SUBLETT, MEADOWS AREA
SANDBOTTOM, ROYALTON AREA

PUNCHEON CAMP CREEK AREA

SALT LICK BRANCH AREA

BEE TREE BRANCH AREA



COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SIGMA GAS CORPORATION)	
)	
COMPLAINANT)	
)	
VS.)	CASE NO. 94-059
)	
B.T.U. PIPELINE, INC.)	
AND RICHARD WILLIAMS)	
)	
DEFENDANTS)	

O R D E R

On February 11, 1994, Sigma Gas Company, Inc. ("Sigma") filed a formal complaint with the Commission alleging B.T.U. Pipeline, Inc. ("BTU") and Richard Williams had interfered with the operations of Sigma and threatened the supply of gas to farm tap customers appropriately served by Sigma.

Eli Warach, acting on his own behalf and on behalf of BTU answered the complaint, counterclaimed and moved to strike portions of the complaint.

The Commission has been notified of an action pending in Magoffin Circuit Court¹ which involves, among other issues, the farm tap services which form the basis of this complaint. As the issue of ownership and control of the identified farm tap services

¹ David Allen et al v. Global Environmental Industries, Inc., et al., Magoffin Circuit Court, 93-CI-00185.

is pending in Magoffin Circuit Court, this complaint should accordingly be dismissed.

IT IS THEREFORE ORDERED that Sigma's complaint be and it hereby is dismissed.

IT IS FURTHER ORDERED that approval of Sigma's tariff issued February 14, 1994 and incorporated by reference in this case be and it hereby is denied.

Done at Frankfort, Kentucky, this 7th day of April, 1994.

By the Commission

ATTEST:



Executive Director

Managerial Issues

Sigma has entered a management contract with Estill Branham, a shareholder, director, and President of Sigma. This is a less-than-arms-length transaction. Mr. Branham, through the management contract, is given sole authority by Sigma to enter, modify, and terminate contracts. He is responsible for paying Sigma's bills and therefore will review and approve payments to himself. Mr. Branham and his family provide services to gas utilities through a corporation named KISU Service Company, Inc. Pursuant to the terms of the management contract, he will be in a position to hire and pay family members without oversight from the board of directors. It is inappropriate for the board of directors of Sigma to delegate their responsibility for oversight regarding certain transactions for Sigma. The Commission, therefore, finds the term of the management contract transferring complete control and discretion to Mr. Branham to contract with any party should be modified to the extent that the board of directors should review and approve any transactions involving Mr. Branham or his family members which are not otherwise specifically covered by the management contract.

The management contract provides that Mr. Branham will be paid a minimum of \$26,400 in the first year up to a minimum of \$42,000 in the third year. This compensation is based upon a guaranteed fee of ten dollars per billing month for each customer of Sigma. This fee covers Sigma's administrative expenses and, according to the agreement, Mr. Branham's compensation for its day-to-day operation including billing, maintenance and emergency repairs,

bookkeeping, and preparation of financial reports. It does not include materials, supplies, meters, repair or replacement parts, equipment, contract labor, or consultants for Sigma.

Salyersville customers currently pay a minimum bill of \$7.00 which includes the use of up to 1 mcf of gas. The current cost to Salyersville of 1 mcf of gas is \$3.10 yielding a contribution to the total fixed costs of Salyersville of \$3.90. Anything over 1 mcf of gas consumed yields a fixed cost contribution of \$3.00 per mcf. It is apparent that payment of a management fee based on \$10 per customer per month will neither improve nor maintain the current financial condition of this utility which it should be remembered, is being transferred by the bankruptcy trustee.

Moreover, Mr. Branham's management fee will increase \$15,600 between year one and year three. This increase is not predicated upon achievement of any service goal but is simply guaranteed in the five year contract. At the hearing, Mr. Branham was questioned about the compensation under the terms of this contract as compared to a similar contract under which he manages Johnson County Gas. (Mr. Branham receives \$18,000 annually to manage the Johnson County system which has nearly three times as many customers as the Salyersville system). Mr. Branham's only justification for the disparity was that he was having a good day when he negotiated this contract.

Mr. Branham's good day notwithstanding, approval of this management contract as part of this transfer will do little to ensure that the Salyersville Gas customers have continued gas

service at a reasonable cost. If there is any hope that this system will achieve financial viability and stability, the amount of the management fee recoverable in the rates of the utility customers must be limited. The Commission has compared the management fee and duties prescribed in the management contract herein with the fees and duties performed by Mr. Branham for the trustees of Johnson County Gas Company. The \$18,000 management fee approved by the trustees and the Commission for the management of Johnson County Gas was adjusted for inflation over the last three years using the CPI Detailed Report, October 1993. Using a 38 percent customer ratio (Salyersville currently has 38 percent as many customers as Johnson County Gas) multiplied by the management fee, adjusted for inflation and determining the per customer amount per month, the Commission has determined that the management fee must be limited to \$2.97 per customer, per billing month. Any compensation above this amount paid to Mr. Branham will be solely the responsibility of the shareholders of Sigma. The Commission will monitor Sigma's post transfer financial transactions by having Sigma file copies of its monthly general ledger.

Technical Issues

Gas Supply

Salyersville has had a history of gas supply disruptions since it began operations in 1984. Thus, Sigma's gas supply arrangements are of primary importance in its proposal to assume ownership and control of the system.